

### **Final Remarks**

No new matter has been added to the claims which have been shown to have structure yielding function neither taught or suggested by the cited prior art.

Regarding claim 22, the term "in the as worn" position is a term used in the industry to describe the eyewear mounted on the face of a user, as it would normally be worn. The wording is correct but Applicant is open to the suggestions of the Examiner for clarity.

### **EVEN MINOR IMPROVEMENTS ARGUE FOR PATENTABILITY**

Still further, it is submitted that claim 1 and the other base claims in the application, teach structures for yielding functions which neither taught or suggested by any of the numerous citations of prior art in this crowded field. The differences in Applicant's device, represent a novel arrangement which provides useful characteristics taught in the cited prior art.

It is therefor submitted that applicant's invention is in the form of a meritorious improvement in the art, which even though it may be considered simple, it is not anticipated by citeable prior art, nor is it believed to be fairly suggested by the cited references.

It is well established that one should not be deprived of patent protection where it can be shown that a genuine improvement has been made, on comparison with other inventions in the art, even if the improvement lacks the appearance of a great advance in the art.

In *re Lange*, 128 USPQ 365, the CCPA on page 367 states that:

"We think that the present application is a distinct improvement of Jezalik and represents an advance in the art not obvious, having patentable novelty. The art is a crowded and comparatively simple one and in such an art, great advances are not to be expected. However patentability will not be denied to an invention which accomplishes a small, but nevertheless genuine improvement not thought of by others."

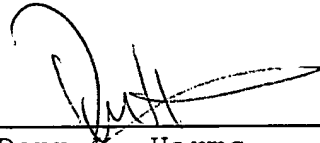
Further, the CCPA in the recent case of *re Meng and Driessen*, 181 USPQ 94, on page 97, reiterated the principal that even though the invention seems simple, *after the fact*, simplicity, particularly in an old and crowded art, argues *for*, rather than against, patentability.

Applicant's device provides genuine improvement in products for the provision of eye treatment and is believed to be a significant advance over the prior art. However, even if applicant's device is only a small advance, case law and the CCPA as noted above, have clearly indicated such small advances, especially in a crowded art, are patentable.

As such all remaining claims in the application should now be allowable.

Should the Examiner have any further questions or concerns the Examiner wishes to address by Examiner's amendment by telephone or otherwise, or should the Examiner have suggestions to more clearly define the subject matter of the claims to more clearly define the patentable subject matter, the Applicant's attorney would be most receptive to such.

Respectfully submitted,



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Donn K. Harms  
Reg No 38,911  
Attorney for Applicant  
Sept 5, 2005

12702 Via Cortina, Ste. 100  
Del Mar, CA 9014  
Tel: (858) 509-1400  
Fax: (858) 509-1677